IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 17700 of 2004

Between:

S. Kalyan Chakravarthy, S/o. Sri S.B. Ramesh Babu,
R/o. Kadapa, Kadapa District.

... PETITIONER

AND

1 State of Andhra Pradesh, Rep. by its Principal Secretary,
Medical and Health Department, Secretariat, Hyderabad.
2 NTR University of Health Sciences, Rep. by its Registrar,

Vijayawada.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction, more particularly one in the nature of Writ of Mandamus: (a) Declare the action of the respondents in not filling up the resultant vacancies of BC-D category candidates with BC-D category candidates as arbitrary, illegal and violative of Article 14 of the Constitution of India and contrary to the Judgment of Full Bench of this Hon'ble Court in 2002 (1) ALT 365; (b) Declare the action of the respondents in not admitting the petitioner into 1 year MBBS Course under BC-D quota for the academic year 2004-2005 in spite the petitioner being the 18th ranker among the BC-D category candidates; (c) Direct the respondents to admit the Writ Petitioner into I Year MBBS Course and also permit the Writ Petitioner

to attend classes for I year MBBS Course for the Academic Year 2004-2005 in Sri Venkateswara University Local area under BC-D quota in any of the Colleges by duly filling up the resultant vacancies of BC-D category candidates with the Writ Petitioner forthwith.

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents: GP FOR MEDICAL HEALTH & FAMI.WELFARE

The Court made the following:

ORDER:

Petitioner who belongs to BC-D category and who appeared for EAMCET-2004 seeking admission into Medical Course obtained rank of '3107' and claims to be 18th ranker among the BC-D category candidates to be admitted into I year MBBS course. The petitioner submits that he participated in the third phase of counseling conducted from 26-09-2004 to 29-09-2004 and he was offered 'B' category (payment) seat. Challenging the said action, he filed the present writ petition contending that 13 candidates who are incidentally members of BC-D category had secured admission under open competition by virtue of their merit; 31 seats earmarked for BC-D category should be filled up commencing from Rank No.22 as per the merit among the BC-D candidates. BC-D candidates who secured admission by virtue of their merit in open competition, if allowed to slide down for better institutions in the third phase of counseling, the resultant vacancies are liable to be filled up with BC-D category candidates only. 21 rankers above the petitioner had secured admission by virtue of their merit in open competition and 31 seats which are earmarked for BC-D category candidates in S.V. University area have to be filled up from Rank No.22 by duly following the merit. If such procedure is followed, petitioner will get a seat. Denial of the seat on the ground that the resultant vacancies caused because of sliding of BC-D candidates was filled up by open category candidates instead of offering the same to the petitioner; the same is arbitrary/contrary to law declared by a Full Bench of this court in ***BATHINA RAJYA SHILPA V. NTR UNIVERSITY OF HEALTH SCIENCES***. The procedure adopted by the NTR University as stated before the Full Bench was that the resultant vacancies on allowing sliding of BC are liable to be filled up by BC candidates belonging to the same group, but the admission now made is

contrary to the stand taken. Since the petitioner, being 18th ranker among the BC-D candidates in the S.V. University local area, wherein 31 seats were earmarked for BC-D in various Government colleges and free seats in private medical colleges, the petitioner cannot be denied the seat.

2. NTR University filed detailed counter stating that as per G.O.Ms.Nos.183, 184 and 185, seats earmarked for various subgroups of BCs, total 42 seats were earmarked for

BC-D category 28 seats in Government colleges and 14 seats in private medical colleges and out of 42 seats 28 seats were earmarked for General category and 14 seats for female quota. Out of the total number of seats available, in the first phase of counseling for 305 seats in S.V. University area, viz. 21 seats were reserved for BC-D category, i.e. 7 per cent of the seats. 8 candidates whose ranks are 48, 54, 160, 456, 467, 531, 796 and 955 attended the counseling and opted for the seat under open competition during the first phase of counseling. The rank holders from rank Nos.160 to 955, who are from S.V. University area also attended the second phase of counseling for seats reserved under BC-D category and they were considered under the said category for

re-allotment to the college of their choice. Accordingly, candidates who secured rank Nos.456, 467, 531, 670, 712, 860, 955, 1088, 1146, 1184, 1280, 1242, 1402 and 1507 were selected under S.V. University area after first phase of counseling against 21 seats reserved for BC-D category and in the place of 5 BC-D candidates selected under open category. The last candidate selected under General category in the Government colleges in S.V. University area is the candidate who secured rank No.1948 and the candidate who secured rank No.2024 was selected under BC-D category in Sidhartha Medical College, which is a statewide institution, which falls under S.V. University area. The last candidate selected under BC-D category in private college for Category-A seats is rank holder No.2083 and rank holder No.2510 in BC-D – Female. Whereas the candidate who secured rank No.9410 was selected under BC-D – Physically Handicapped quota in Kurnool Medical College and the candidates who were selected under BC-D – General category in the S.V. University area are meritorious candidates than the petitioner and as per the above said G.O

s., resultant vacancies are open to all the candidates below the rank of candidates who have not joined the course and the candidates who were absent in the earlier selection. They shall be filled up by the candidate belonging to the same category of the students as those who have not joined the course or vacated the seat.

3. In the third and final selection to fill up the vacancies, the total seats to be filled by the University in S.V. University area are 587, out of which 42 seats were earmarked for
BC-D category (28 General, 14 Female). In the first counseling, 21 seats are filled up and 21 seats are filled up in third counseling. It is further stated that as per the above said G.O s., the selection shall be made only from among the candidates who physically present themselves when called in the order of merit. Petitioner is at S.No.31, but the last candidate who was selected has secured rank No.2778. Candidates who secured ranks from 3297 to 9410 were selected and admitted into reserved seats vacated by the candidates on sliding. It is stated that when the petitioner was offered a seat under B-Category, he did not accept the same. The last candidate who secured seat under Category-A is rank holder No.2778, but no candidate below the rank of the petitioner is admitted into Category-A seat and that there is no illegality or irregularity in allotting seats and selecting the candidates.

4. Learned counsel for the petitioner contends that as seen from the counter, the selected candidates are rank holders from 456 to 860 who are eligible to be considered under open category since they will get their seat on their own merit and they cannot be considered for the seats reserved for
BC-D category. If they are excluded, petitioner who secured rank No.3107 is entitled to a seat, as he is in between the rank holder No.2778 and 3297 as per the list given in Page No.7 of the Counter Affidavit. The same is contrary to the law declared by this Court in *Bathina Rajya Shilpa's case* (1 supra), ***GOVT. OF A.P. V. P.B. VIJAYA KUMAR*** and ***NTR UNIVERSITY OF HEALTH SCIENCES V. G. BABU RAJENDRA PRASAD***.

5. On the other hand, learned counsel for the respondent university contends that out of total seats of 305, 21 seats were earmarked for BC-D category in the first counseling.

8 candidates are eligible to be considered in open category, but out of them 5 candidates have opted to slide down to the college of their choice. If the same is added, 26 seats were earmarked for BC-D category. In all 47 seats have to be filled up from BC-D viz., 42+5, who have opted to slide down as held by this Court in *Bathina Rajya Shilpa's case* (1 supra).

6. As per the selection process undertaken, a note that has been filed by the respondent university reveals that in the first phase of counseling, last rank in open competition in S.V. University is 1054, whereas the last ranker under

BC-D category is 2396 in the S.V. University area. The last rank in the Govt. Medical College for A-Category seats in third and final counseling is rank No.1432 in the S.V. University area. The applicant, who secured rank No.3107, is far below the other candidates. The last rank under BC-D category in the third and final counseling is rank No.2919 in S.V. University area. Out of the 28 Govt. seats, first seat was earmarked for Physically Handicapped quota and there remain 27 seats out of which 9 seats were reserved for women.

2 open category female seats vacated by candidates who were selected under open category were re-allotted to the college of their choice. Thus the total number of seats under

BC-D – female category in Govt. College has increased to 11. Similarly, number of seats under BC-D – General category in Govt. College in S.V University area are 19 + 3 = 22. As seen from the chart produced by the learned counsel for the respondent, the candidates who secured rank from 3297 to 9410 were not admitted under open competition for

A-Category seats among BC-D. The candidates who secured rank No.3297, 3497 were given admission under the female reservation for which the petitioner cannot have any claim.

If the candidate who has secured rank No.9410 was admitted under Physically Handicapped quota, petitioner cannot have any claim. Similarly for 9 A-Category seats under women reservation, 1 general category seat was vacated by the candidate who was re-allotted to the college of their choice, which

resulted in increase in 1 seat in Category-A in private medical colleges, making the total to 7. Of the ten seats,

3 candidates secured rank lower than the petitioner and all the three, got seat in the female reservation quota, for which the petitioner cannot have any claim. In view of the same, the submission made by the learned counsel for the petitioner that petitioner was denied the seat though he is entitled to be selected for A-Category seat is of no merit and cannot be considered. The said sliding down was in consonance with the law declared in *Bathina Rajya Shilpa's case* (1 supra).

The writ petition is accordingly dismissed. No costs.

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A. **GOPAL REDDY, J**

October 26, 2004

MRR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To:

1 State of Andhra Pradesh, Rep. by its Principal Secretary,

Medical and Health Department, Secretariat, Hyderabad.

2 NTR University of Health Sciences, Rep. by its Registrar,

Vijayawada.

3 Two C.C. s to the G.P. for Medical Health and Family

Welfare, High Court Buildings, Hyderabad (OUT)

4 Two C.D. Copies.